

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 11, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0834

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**LEANDER J. SCHLOSSER, MATTHEW SCHLOSSER AND
RONALD SCHLOSSER,**

PLAINTIFFS-APPELLANTS,

V.

**TERRY SCHLOSSER AND UNDERGROUND EXCAVATION,
INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Pepin County:
DANE F. MOREY, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Leander Schlosser, Matthew Schlosser and Ronald Schlosser appeal a judgment entered in favor of Ronald in the sum of \$37,826.51 and requiring Ronald to execute a quit claim deed in favor of Underground Excavation, Inc. The Schlossers argue that the trial court erroneously refused

evidence of certain expenditures Ronald made for the property and that Underground Excavation, Inc., was unjustly enriched. To the extent the expenditures were operating expenses, the court properly rejected the evidence as irrelevant. To the extent the expenditures were for improvements, the record fails to demonstrate any resulting enhanced value. We therefore affirm the judgment.

The facts giving rise to the issues presented involve Ronald's claim that he is entitled to reimbursement for expenses incurred during the time he held title to a campground that should have been conveyed to Underground Excavation. In the mid-1980s, Ralph Wallin, a friend of Ronald's, purchased vacant land to develop into the campground. Ronald, who owned an excavation business, filled in a town dump that was on the land and agreed to furnish additional excavation work in exchange for one-half interest in the campground. This agreement was never reduced to writing.

Eventually, Ronald's excavation business encountered financial difficulties and was sold to James Swain, who later sold it to Ronald's son, Terry Schlosser. Terry purchased the business with a loan from Ronald's father. Terry changed the name of the business to Underground Excavation, Inc. Ronald was employed by Underground.

During the early 1990s, Ronald continued to perform work at the campground, using Underground's equipment. Underground eventually submitted a bill to Wallin for approximately \$100,000 for work completed at the campground. Wallin negotiated a settlement with Underground that title to the campground would be transferred to Underground in the event Wallin failed to pay a stipulated amount within a specified time. Under the terms of the

agreement, Underground would assume responsibility for an existing mortgage and certain other campground debts.

Wallin failed to pay as scheduled, and Underground wrote checks to the bank to pay the balance due on the campground mortgage. Ronald, using the checks to pay the mortgage, arranged with Wallin to have title to the campground conveyed to Ronald personally rather than to Underground. Ronald operated the campground, incurred numerous expenses, and testified that although the campground had income, it never made a profit.

After Terry defaulted on the loan from his grandfather, the note was assigned to Ronald and his brothers, who initiated this action. Terry and Underground counterclaimed for conversion of the campground property. The parties stipulated to the amount due on the note assigned from the grandfather and the trial proceeded on the counterclaim. Ronald sought reimbursement for expenditures that he made while operating the campground.

Although the trial court permitted reimbursement for certain debts Ronald paid at the time he obtained the campground, it denied admission of "Exhibit 21," a list of numerous expenditures Ronald made while operating the campground totaling \$186,705.33. The list included annual telephone bills, landscaping expenses, plumbing bills, sales taxes, advertising, brochures and signs, water and sewer bills and playground equipment. It also included over \$52,000 on a bank loan that Ronald claimed was to pay bills and improvements.

The trial court concluded that Ronald had failed to show whether the expenditures enhanced the property's value resulting in a benefit to Underground. The trial court entered a money judgment in favor of Ronald to compensate him

for the campground debts that Ronald paid when he obtained title, and ordered Ronald to convey the campground to Underground.

The Schlossers argue that the trial court erroneously denied admission of Exhibit 21. They argue that the exhibit was relevant to determine whether Underground would be unjustly enriched by receiving conveyance of the campground. We conclude that the record fails to support his claim.

Evidentiary issues are addressed to trial court discretion. *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983). Unjust enrichment is an equitable remedy also addressed to trial court discretion. *Lueck's Home Improvement, Inc. v. Seal Tite Nat'l, Inc.*, 142 Wis.2d 843, 847, 419 N.W.2d 340, 342 (Ct. App. 1987). When reviewing a discretionary decision, we review the record to determine whether it provides a rational basis for the trial court's decision. *Pharr*, 115 Wis.2d at 342, 340 N.W.2d at 501.

Unjust enrichment may be found when a benefit is conferred that the defendant appreciated or retained under circumstances making it inequitable. *See Watts v. Watts*, 137 Wis.2d 506, 531, 405 N.W.2d 303, 313 (1987). "A loss to the plaintiff without an actual benefit to the defendant is not recoverable as unjust enrichment." *Lawlis v. Thompson*, 137 Wis.2d 490, 499 n.1, 405 N.W.2d 317, 320 n.1 (1987). Also, if a plaintiff, by its own choice without compulsion or consent of the defendants, chooses to proceed with improvements, it may be said that the enrichment cannot be denominated as unjust. *Green Tree Estates v. Furstenberg*, 21 Wis.2d 193, 198, 124 N.W.2d 90, 92 (1963).

Here, the trial court observed that no testimony had been received regarding the campground's fair market value. It concluded that unless the fair market value exceeded the amount Underground had coming on its bill to Wallin,

there would be no benefit conferred. The record supports this reasoning. In reviewing Exhibit 21, it appears that numerous expenses were incurred in operating the campground. To the extent the expenditures were operating expenses, Ronald is not entitled to reimbursement. Although Ronald's income from the campground was modest when compared with his expenditures, income was received and the campground operated as a business and for a profit. The trial court could reasonably deny operating expenses when Ronald was operating the campground for his own profit. He cannot pass to the rightful owner the results of his unprofitable business operation. Underground made no claim for any profits, and Ronald's expenses are his sole responsibility and not obligations that must be paid by Underground in return for obtaining title.

The Schlossers contend that the expenditures were not expenses of doing business but rather improvements that enhanced the value of the campground. To the extent that the expenditures are claimed to be improvements, the record fails to demonstrate any enhanced value. There is no proof of the property's fair market value or how the expenditures would have enhanced its value. The trial court permitted Ronald, as the owner, to testify as to the campground's fair market value, but Ronald did not offer his opinion. The proofs were insufficient to show that Ronald's expenses conferred any benefit to Underground. Because the record reveals a rational basis for the trial court's decision to deny admission of Exhibit 21, the exhibit was properly excluded. The court reasonably concluded that the evidence was insufficient to find that Underground received any benefit.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

